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December 8, 2020

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VIA ELECTRONIC DELIVERY & COURT FILING

The Honorable Andrew L. Carter, Jr.
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: United States v. Anthem, Inc., 1:20-cv-02593-ALC

Dear Judge Carter:

We represent the Defendant in this case, Anthem, Inc. (“Anthem”). We write in response to Plaintiff’s December 7, 2020 letter regarding the Second Circuit’s recent decision in *United States v. Strock*, No. 19-4331 (2d Cir. Dec. 2, 2020), which addresses the materiality requirement of the False Claims Act (“FCA”). *See* Dkt. 49; Dkt. 49-1 (“*Strock* Slip Op.”).

Plaintiff’s letter identifies portions of the parties’ principal briefs (Dkt. 37 & Dkt. 44) regarding Anthem’s pending motion to dismiss. For the Court’s convenience, Anthem identifies the following additional issues raised in the parties’ briefing to which the *Strock* decision relates, and also includes references to the relevant portions of Anthem’s Reply Memorandum of Law, Dkt. 45:

- The relation between the materiality “factors” described in *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989 (2016), and the focus of the materiality inquiry on the government’s “payment decision,” *Strock* Slip Op. at 10-17; Dkt. 37 at 37-40; Dkt. 44 at 29-30; Dkt. 45 at 19-21.
- The importance of factual allegations that the government has previously “refused to pay a claim or terminated an existing contract based on” allegedly similar conduct, *Strock* Slip Op. at 22; Dkt. 37 at 46-48; Dkt. 44 at 33-35; Dkt. 45 at 15.
- The relevance, or lack thereof, of prior government FCA suits over allegedly similar conduct, *Strock* Slip Op. at 21-22; Dkt. 37 at 45; Dkt. 44 at 36; Dkt. 45 at 16-18.
- The relevance, or lack thereof, of Plaintiff’s allegations about what the Center for Medicare and Medicaid Services (“CMS”) “might have” or “would have” done if it knew of the allegedly false representations, *Strock* Slip Op. at 22-23; Dkt. 37 at 44-46; Dkt. 44 at 34-36; Dkt. 45 at 14-15.

Like Plaintiff, Anthem would welcome the opportunity to address the relevance of the *Strock* decision in supplemental briefing if the Court would find it useful. We thank the Court for its consideration of this letter.



Dated: December 8, 2020

Respectfully submitted,

By: /s/ K. Lee Blalack, II

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